In the circumstances I must with regret decline to make the order applied for.

In view of my conclusion on the merits of this application, it is unnecessary to deal with the technical objections made by Inche' Ismi on behalf of the Commissioner of Lands.

Application refused.

Solicitors: *K. L. Devaser & Co.*

Re HILLMAN MINX NO. SU 3503

[O.C.J. (Adams J.) February 8, 1962]

[Muar — Originating Motion No. 1 of 1962]

Forfeiture — Vehicle of innocent person used in connection with an offence.

In this case a person who subsequently pleaded guilty to attempted kidnapping and unlawful possession of a firearm, hired a motor car from a self-drive firm. The motor car itself was under hire-purchase agreement. When the accused was arrested he took the police to the motor car and under the seat a pistol was found. At the end of the subsequent proceedings against the accused for unlawful possession of the firearm the learned President ordered the confiscation of the motor car without having heard either the owner of the motor car or the hire-purchase firm. On an application to set aside the order it was urged for the applicant, *inter alia*, (a) an innocent party should not be penalised by having his property declared forfeit through the fault of another, (b) before the order of forfeiture is made the owner should be called upon to show cause and given opportunity to do so.

Held: (1) as the motor car in this case was the property of a completely innocent person to whom no knowledge of the offence could be attributed, an order for forfeiture should not have been made;

(2) in order to ascertain whether the owner of the motor car was innocent it was necessary that he should be called upon to show cause;

(3) as this course was not adopted by the learned President the order of forfeiture was wrongly made and must be set aside.

Case referred to:—

(1) *Cheng Kee Huat & Anor.* v. *Public Prosecutor* [1948] M.L.J. 53.

ORIGINATING MOTION.

K. E. Hilborne for the applicant.

Hamzah bin Dato Abu Samah (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Adams J.: This was an application by Mr. K. E. Hilborne of counsel on behalf of Lombard Acceptance Malaya Limited praying that the Order of the learned President of the Sessions Court at Muar forfeiting a Hillman Minx Motorcar No. SU 3503 be set aside.

Mr. Hilborne made three points. Firstly, the vehicle had not been used for the commission of any offence. Secondly, that in any event an innocent party should not be penalised by having his property declared forfeit through the fault of another. And thirdly, before an order of forfeiture is made the owner should be called upon to show cause and given an opportunity to do so.

The brief facts were that a person who subsequently pleaded guilty to attempted kidnapping and unlawful possession of a firearm, hired the motor car from a self-drive firm. The motor car itself was under hire-purchase agreement between the sister of the proprietor of the self-drive hire firm and the applicant. On the arrest of the accused in a hotel in Batu Pahat he took the Police to the motor car which was standing outside the hotel and under the seat a pistol was found. At the end of the subsequent proceedings against the accused for unlawful possession of the firearm the learned President ordered the confiscation of the motor car without having heard either the owner of the motor car or the hire-purchase firm.

Because of my views on the second and third of Mr. Hilborne's submissions I do not propose to say anything on the first. On the authority of *Cheng Kee Huat & Anor.* v. *Public Prosecutor* [1] I do not think that where a motor car, the property of a completely innocent person is being used in connection with an offence of which no knowledge can be attributed to such person, that an order of forfeiture should be made. In order to ascertain whether the owner of the motor car is innocent it is necessary that he should be called upon to show cause before any order of forfeiture is made. This course was not adopted by the learned President and that in my opinion is sufficient to say that the order of forfeiture was wrongly made and must be set aside. I understand that the vehicle has since been auctioned and sold. If that is correct, any such sum as was realised by the auction should be handed over to the applicant.

Application granted.

Solicitors: *Hilborne, Chung & Co.*

TAN AH HOONG v. MAHALINGAM

[O.C.J. (Suffian J.) February 12, 1962]

[K.L. — Civil Suit No. 528 of 1959]

Damages — Fatal accident — Contributory negligence — Funeral expenses incurred voluntarily by friends and relatives — Moral obligation to repay.

In this case the defendant's car collided with a trishaw ridden by the plaintiff's husband (aged 35) thereby causing his death. The defendant was accelerating, but he is not certain whether he had changed into top gear before the collision, but he mentioned that he was not travelling fast. Brake marks left by the off side and near side wheels on the dry road were 60 and 53 feet long respectively. The deceased was thrown forward 14 ft. and the trishaw was thrown forward 39 ft. The defendant also stated that he did not take into consideration the fact that the deceased might enter the major road suddenly. The following questions were raised: (1) was the defendant negligent in colliding with the trishaw and causing the death of the deceased, (2) was the deceased guilty of contributory negligence, and (3) what was the quantum of damages payable by the defendant if he was liable in whole or in part.